UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

VERIZON INFORMATION SERVICES[1] Employer and ROBERT A. GALLAGHER[2] Petitioner	Case 4–RD–2079
and COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO[3] Intervenor	

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Verizon Information Services, has offices in several Mid-Atlantic States, where it sells advertising for print and electronic telephone directories. Robert A. Gallagher filed the petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Intervenor, Communications Workers of America, as the representative of sales representatives and other employees who work in the Employer's Marlton, New Jersey sales office.

The Intervenor contends that the decertification petition is barred by its collective-bargaining agreement with the Employer, which expires on October 3, 2009. The Petitioner asserts, however, that the collective-bargaining agreement does not constitute a bar because the Intervenor's contract ratification procedures were improper, in particular its pooling of the ratification votes of several bargaining units. The Employer takes no position as to whether an election should be directed but requests that this decision fairly balance the competing interests involved.

A Hearing Officer of the Board held a hearing, and the Intervenor and the Employer filed briefs. I have considered the evidence and the arguments presented by the parties, and, as

[1] The Employer's name appears as amended at the hearing.
[2] The Petitioner's name appears as amended at the hearing.
[3] The Intervenor's name appears as amended at the hearing.

discussed below, I have concluded that the collective-bargaining agreement bars an election. Accordingly, I have dismissed the petition.

To provide a context for my discussion, I will first present the relevant background. Then, I will review the factors that must be evaluated in determining whether the contact bars the petition. Finally, I will present, in detail, the facts supporting this conclusion.

I. BACKGROUND

The Employer maintains 21 advertising sales offices in New York, New Jersey, Pennsylvania, Maryland, Virginia, and West Virginia. The four New Jersey sales offices are located in Elmwood Park, Piscataway, Neptune, and Marlton. Some 40 employees work in the Marlton office.

In August 2000, the Employer recognized the Intervenor as the collective-bargaining representative for its employees in all six states pursuant to a neutrality agreement and card check. The parties submitted to arbitration the question of whether one overall bargaining unit for all sales offices, or a number of individual bargaining units, each comprised of the employees at a single sales office, was more appropriate. In December 2001, an arbitrator found that each facility constituted a separate bargaining unit. There are three bargaining units in New Jersey, rather than four, because the Piscataway and Neptune offices are combined into a single bargaining unit.[4]

II. FACTORS RELEVANT TO DETERMINING WHETHER THE COLLECTIVE-BARGAINING AGREEMENT BARS AN ELECTION

The purpose of the Board's contract bar doctrine is to achieve, "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958); see also *Deluxe Metal Furniture Co.*, 121 NLRB 995, 997 (1958). Pursuant to this policy, a contract for a reasonable term not in excess of three years will bar a representation petition for the duration of the agreement except for an "open period" from 60 through 90 days before the termination date of the agreement, during which a petition may be filed. *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958, 959–960 (1982); *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). To constitute a bar, a contract must be in writing, must be signed by all parties prior to the filing of a petition, and must contain substantial terms and conditions of employment. *Appalachian Shale Products*, above at 1162-1163; see also *Television Station WVTV*, 250 NLRB 198, 199 (1980). The burden of proving that a contract is a bar falls on the party asserting that it has that effect. See *Road & Rail Services, Inc.*, 344 NLRB No. 43, slip op. at 2 (2005); *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

[4] The record does not clearly indicate why these two offices constitute a single unit but suggests that their operations are closely connected.

A party may assert, as the Intervenor does here, that a contract exists that bars the petition, and another party may claim, as the Petitioner does here, that the contract is not a bar because it was not ratified. Failure to ratify a contract will render the contract ineffective as a bar only where an express provision requiring prior ratification is contained in the contract itself. *Paperworkers Local 5* (*International Paper Co.)*, 294 NLRB 1168 fn. 1 (1989); *Appalachian Shale Products*, above. In determining the validity of a contract, including a condition of prior ratification, the Board limits its inquiry to the four corners of the document asserted as a bar and excludes the consideration of extrinsic evidence or parol evidence. *Waste Management of Maryland, Inc*., 338 NLRB 1002 (2003); *Merico, Inc*., 207 NLRB 101 fn. 2 (1973).

III. FACTS

The parties met and bargained in 2003 for a "model agreement," which served as the basis for collective-bargaining agreements for all three New Jersey sales office units represented by the Intervenor. The Intervenor explicitly rejected an Employer proposal that would have required it to ratify collective-bargaining agreements in each unit separately. Rather, the Intervenor pooled the ratification votes of the employees in all of the New Jersey sales offices. The effective dates of the ratified agreements for the New Jersey bargaining units were February 9, 2003 through October 7, 2006.[5]

On March 13, 2006, the parties signed a Memorandum of Agreement setting out the terms for a model agreement for the three New Jersey bargaining units. The Memorandum of Agreement contained the following clause:

> The parties do not intend to change the three units' status as separate bargaining units. Nonetheless, the parties agree to present for acceptance model amendments to each of the three expiring collective bargaining agreements as follows:

This language was followed by a list of the agreed-upon changes to the prior contract, including the new agreement's effective dates, March 26, 2006 through October 3, 2009.

The Intervenor then conducted ratification meetings in each of the New Jersey sales offices and pooled the votes. The Marlton unit voted 19 to 13 against the contract. However, when the three bargaining units' votes were totaled, the vote was 86 to 20 in favor of ratification, and on March 20, 2006, the Intervenor notified the Employer that the model agreement had been ratified. The results of the ratification votes were also posted on the Intervenor's bulletin boards at each facility and reported in its newsletter to members.

The petition in this case was filed on July 17, 2006.

[5] The New York bargaining units' contracts expired in October 2005, and in January 2006, the parties completed negotiations for a model agreement for those units. During negotiations, the Employer proposed language requiring ratification by each individual bargaining unit, but the Intervenor rejected that proposal.

IV. ANALYSIS

The Petitioner asserts that the Memorandum of Agreement is ineffective as a bar because it was not separately ratified by the Marlton bargaining unit. This contention is not supported by Board law. In *Swift & Co.*, 213 NLRB 49 (1974), the Board made clear that ratification for contract bar purposes may be conducted by a union in any manner not inconsistent with the parties' agreement to require ratification. In that case, the employer and the union signed a master agreement for several separate bargaining units represented by five local unions, with a clause stating that "this agreement is signed by the Union subject to ratification by the Local Unions." The union conducted ratification votes in the units, but the pooled votes in three were sufficient to constitute a majority of the total membership of the five locals, and the union notified the employer that the contract had been ratified. A subsequent petition was filed in one of the local's bargaining units (Marshalltown), but the Board found that permitting ratification by a majority of the local unions and a majority of the members was a reasonable reading of the clause requiring ratification, and the Board barred the petition.[6] Similarly, in this case the Memorandum of Agreement does not specify whether the votes in the three units will be tallied separately or pooled. Therefore, the Intervenor was free to conduct its ratification process either way. In this connection, inasmuch as the votes were pooled for the New Jersey units in 2003 and the New York units in 2005, after the Intervenor rejected the Employer's proposals for separate votes, the parties reasonably would have contemplated that any ratification procedure would be handled the same way in 2006.

Moreover, the cited language in the model agreement is more ambiguous than that in *Swift* because it does not specifically mandate ratification by employees, but instead requires the document to be "presented for acceptance." The document does not clearly indicate to whom the agreement would be "presented" or what would constitute "acceptance."[7] As the Memorandum

[6] The Board further noted, in footnote 13, that "it is for the union, not the employer, to construe and apply its internal regulations relating to what would be sufficient to amount to ratification," quoting *M & M Oldsmobile, Inc*., 156 NLRB 903, 905, 906 (1966), enfd. 377 F. 2d 712 (2d Cir. 1967). Former Board Members Kennedy and Penello dissented in *Swift*. In their view, the language of the contract clause requiring "ratification by the Local Unions," mandated separate ratification by each bargaining unit.

[7] Other aspects of this language are also imprecise and susceptible to multiple interpretations. Thus, the Memorandum appears to contemplate that both the Employer and the Intervenor will take some action, in that it states "the *parties* agree to present for acceptance," which seems inconsistent with an agreement to require ratification, as the Employer would not be involved in an employee ratification process. Additionally, it is not completely clear from the second cited sentence whether the parties would be presenting the changes for acceptance "to each of" the bargaining units, or whether the changes are merely "to each of" the bargaining agreements, with no particular requirement that they be presented to each unit.

of Agreement does not definitively require ratification at all, it falls short of imposing a requirement that the contract be ratified by each unit pursuant to a separate vote.[8]

A petition in this matter would have been timely had it been filed more than 60 days but less than 90 days before the predecessor contract's third anniversary, or had it been filed after the third anniversary but before March 26, 2006, when the successor agreement was executed. *Union Carbide Corp.*, 190 NLRB 191, 192 (1971).[9] As the petition was not filed until July 17, 2006, it was barred by the parties' contract and is therefore dismissed.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Intervenor claims to represent certain employees of the Employer.

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[8] In unfair labor practice cases, the Board has generally held that the ratification process is an internal union matter, and that the employer lacks standing to question the adequacy of the process absent an agreement with the union about the specific procedures to be followed. See *Beatrice/Hunt-Wesson*, 302 NLRB 224 (1991); *Childers Products Co.*, 276 NLRB 709 (1985), enfd. 791 F.2d 915 (3d Cir. 1986); *M&M Oldsmobile*, 156 NLRB 903 (1966) enfd. 377 F.2d 712 (2d Cir. 1967). However, in several cases, the Board has found pooled voting arrangements to be prohibited by Section 8(b)(3) of the Act where the pooled bargaining units voted on each others' distinct, separately bargained agreements. See *Jefferson Smurfit Corp.*, 311 NLRB 41, 55-56 (1993); *Paperworkers Local 20 (International Paper Co.)*, 309 NLRB 44 (1992). In contrast, the Board has permitted pooled voting arrangements where the separate bargaining units share a close community of interest and are considering identical employer offers. *Jefferson Smurfit*, above at fn. 2; *Steelworkers Local 2556* (*Lynchburg Foundry)*, 192 NLRB 773 (1971), enfd. 80 LRRM 2415 (4th Cir. 1972). Although the separate contracts for each of the New Jersey units are not in evidence in this case, the record suggests that the model agreement was used for all three units.

[9] The Memorandum of Agreement is written, signed by the Employer and the Intervenor, and expresses the complete and substantial terms of a successor collective-bargaining agreement and therefore constitutes a "contract" for contract bar purposes. See, e.g., The *Youngstown Osteopathic Hospital Assoc.*, 216 NLRB 766 (1975). This contract was not prematurely extended because it was executed more than three years after the effective date of its predecessor contract.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

VI. ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. Upon the filing of such request for review, the filing party shall serve a copy of the request on the other parties and shall file a copy with the Regional Director either by mail or by electronic filing to Region4@nlrb.gov.[10] A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see http://gpea.NLRB.gov/. The request for review must be received by the Board in Washington by 5:00 p.m., EDT on **September 6, 2006.**

Signed: August 23, 2006

at Philadelphia, Pennsylvania

/s/ [Daniel E. Halevy]
DANIEL E. HALEVY
Acting Regional Director, Region Four
National Labor Relations Board

[10] See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board or to a Regional Office's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlrb.gov.